

Gary L. Cooper (ISB No. 1814)
Ron Kerl (ISB No. 1768)
COOPER & LARSEN, CHTD.
151 North 3rd Avenue, Suite 210
P.O. Box 4229
Pocatello, Idaho 83205-4229
Telephone (208) 235-1145
Facsimile (208) 235-1182

U.S. COURTS

SEP 17 PM 4:33

Attorneys for Pocatello Dental Group, P.C.

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,
an Idaho professional corporation,

Plaintiff,

vs.

INTERDENT SERVICE CORPORATION,
a Washington corporation,

Defendant.

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION,
a Washington corporation,

Counterclaimant,

vs.

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation; DWIGHT G.
ROMRIELL, individually; LARRY R.
MISNER, JR., individually; PORTER
SUTTON, individually; ERNEST SUTTON,
individually; GREGORY ROMRIELL,
individually; ERROL ORMOND, individually;
and ARNOLD GOODLIFFE, individually;

Counterdefendants.

**MOTION PURSUANT TO
F.R.C.P. 56(f)**

COMES NOW Pocatello Dental Group, P.C., by and through its attorneys of record ("Group"), and pursuant to F.R.C.P. 56(f) respectfully requests the court to refuse consideration of the Defendant Interdent Service Corporation's ("ISC") Motion for Summary Judgment because discovery must be had to develop the substance of Defendant's post-confirmation breach of the contracts and agreements it has with the Group.

In support of this motion the Group represents that the claims asserted in its complaint arose post-confirmation. Many of those claims are briefly discussed below. Discovery is needed to develop many of these claims and the Group does not intend to prove the merits of these claims in its response to the Defendant's Summary Judgment Motion. Rather, the discussion below is intended to demonstrate that the post-confirmation claims of the Plaintiff require additional discovery before they are submitted to any disposition by the Court.

a. Failure to include in dentists' compensation the dentists' share of interest charged on patients' accounts.

The Group asserts that its dentists are entitled under the Management Agreement and their employment agreements to their share of the interest that ISC charges and collects against patients' accounts. Since October 3, 2003, and continuing thereafter, ISC has collected such interest and failed to pay the dentists their share of that interest. Without further discovery, the Group is unable to document the extent of this practice, the amount of interest collected, and the dollar amount of the damages suffered at the hand of ISC.

b. Failure to deposit accounts receivable in an account approved by the Group.

ISC has admitted that it was not following the requirements of the Management Agreement with respect to the banking arrangements required by the parties' Management Agreement. ISC took

some action to correct this problem, but continues to use its California address as the address for the Group in violation of the parties' stipulation and the Court's order regarding the Group's mail. From October 3, 2003 and continuing thereafter, ISC has breached the Management Agreement in its handling of Group's accounts receivable. Without further discovery, the Group is unable to document the extent of this practice, or its financial effect on Group.

c. Failure to pay the claims and obligations of the Group.

Since October 3, 2003, the Group has incurred legal fees in prosecuting this action and defending the counterclaims of ISC. The Group has also incurred fees for mediation. ISC continues to refuse to pay these fees, which it is obligated to do under the Management Agreement, thereby increasing its share of Group's accounts receivable. Without further discovery, the Group is unable to document the extent of this practice or its financial effect on Group.

d. Interference with the Group's practice of dentistry.

Since October 3, 2003, ISC has interfered with the Group's practice of dentistry by, among other things, not placing patients on active recall status and by continuing to put patients who are in a course of treatment on a no-recall status. ISC has also interfered with Group's attempts to hire dentists to perform critical dental services in the areas of orthodontics and pediatric dentistry. Further discovery is needed to determine the extent of this practice and its financial effect on Group.

e. Failure to hire and train all non-dentist personnel necessary for the operation of the practice.

Dentists at the Group currently lack sufficient numbers of trained staff. This situation existed on October 4, 2003 and continues to exist today. Without further discovery the Group is unable to document the extent of any training received by ISC's staff, the staffing levels for Group as

compared to staffing levels for other dental practices managed by ISC, and how this practice has adversely effected the Group.

f. Charging paid time off, a benefit to ISC's employees, to dentists as direct wages.

Since October 3, 2003, and continuing thereafter, ISC has charged dentists for ISC personnel's paid time off, a benefit that ISC is obligated to pay, and not a charge to the Group's dentists. Discovery is needed to determine the extent of this practice, the amounts improperly withheld from the Group's dentists, and its financial effect on the Group.

g. Failure to maintain the Group's practice as the preeminent group practice in the Pocatello and surrounding area, and

h. Failure to provide and maintain equipment and supplies necessary for the efficient and effective operation of the Group's practice.

Mr. Wintersteen's report was prepared on October 14, 2003. It documents the state of disrepair and uncleanliness of the Pocatello facility and the poor condition of the dental equipment ISC is required to purchase and maintain. Since October 3, 2003, ISC has purchased no technology and made no improvements to the dental facility. The equipment and facility remain in the same state of disrepair described by Mr. Wintersteen. Just two weeks ago Dr. Greg Romricll, after requests for an infrared cavity detector were repeatedly denied by ISC, was required to purchase that piece of equipment out of his own pocket for \$2,400. Discovery is needed to determine the extent of this practice, the extent of equipment and capital improvements ISC has improperly withheld from the Group, and its financial effect on Group.

i. Failure to provide an experienced manager.

Since October 3, 2003, ISC has failed to provide the Group with a manager who has experience in dental practice management. Barbara Henderson has held that position. Her career background is that of a bookkeeper. She lacks experience in dental management and human resource skills. Discovery is needed to determine the extent of Henderson's lack of experience and training and its financial effect on Group.

j. Failure to provide financial statements and accounting records.

Since October 3, 2003, ISC has not provided the Group with financial statements and accounting records and, in fact, has denied or ignored the Group's requests for records. The Group's collection rates have significantly dropped in the past two months. Discovery is needed to obtain financial information from ISC to see if its conduct is causing the drop in income.

k. Denial of access to patients' records.

Since October 3, 2003, Drs. Dwight Romriell, Greg Romriell and L.R. Misner, all members of the Group, have requested patient lists, patient flow records and/or production information from ISC. ISC has refused to turn over those lists and records to the treating dentists in violation of the Management Agreement. Discovery is needed to obtain patient information from ISC.


l. Violation of laws and public policy related to the practice of dentistry.

The Group has legal, professional and ethical obligations to ensure that its patients receive continuity of treatment and are not abandoned. Since October 3, 2003, Drs. Dwight Romriell and L.R. Misner have left the practice. Discovery is needed to determine what information ISC has communicated to the Group's patients to ensure that the Group has satisfied its legal, ethical, and professional obligations to its patients.

WHEREFORE, having satisfied the requirements of F.R.C.P. 56(f), the Plaintiff respectfully requests the court to either (1) deny Defendant's pending summary judgment motion, or (2) delay consideration of that motion pending the completion of discovery pursuant to the parties' stipulated litigation plan or the order of the Court.

Dated this 17 day of March, 2004.

COOPER & LARSEN, CHTD.
Attorneys for Pocatello Dental Group, P.C.



Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 17 day of March, 2004, I served a true and correct copy of the foregoing document as follows:

Erik F. Stidham
G. Rey Reinhardt
STOEL RIVES LLP
101 S. Capitol Blvd., Ste.1900
Boise, ID 83702-5958

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Scott J. Kaplan
STOEL RIVES LLP
900 SW Fifth Ave. Ste. 2600
Portland, OR 97204-1268

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Lowell N. Hawkes
1322 East Center
Pocatello, ID 83201

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Richard A. Hearn
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

By: 
Ron Kerl